

THIS DECISION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Worldwide, Inc.

Serial No. 76506518

Michael E. Dergosits of Dergosits & Noah for applicant.

Jeri J. Fickes, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney).

Before Quinn, Chapman and Rogers, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Worldwide, Inc. to
register the mark PETSPREAD for "protective blanket throw
for pets."¹

The trademark examining attorney refused registration
under Section 2(e)(1) of the Trademark Act on the ground
that applicant's mark, when applied to applicant's goods,
is merely descriptive thereof.

¹ Application Serial No. 76506518, filed April 14, 2003, alleging
first use anywhere and first use in commerce on November 30,
2002.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

The examining attorney maintains that the applied-for mark merely describes the nature of and the use for the goods. The examining attorney's position is that each of the terms "pet" and "spread" is descriptive, and that the combination of the terms does not result in a unitary mark with a meaning independent of the separate terms used to create the mark. In support of the refusal, the examining attorney introduced a dictionary definition of the term "spread," an excerpt from applicant's web page, and an excerpt from a third-party's web page retrieved from the Internet.

Applicant, in urging that the refusal be reversed, contends that the dictionary evidence relied upon by the examining attorney shows that the term "spread" has many different meanings, and that PETSPREAD is a coined term which has no dictionary definition. According to applicant, "PETSPREAD could mean a sleeping surface for a pet, or an area which a pet would occupy (such as the second noun definition cited by the Examining Attorney) or a food intended for consumption by a pet (as connoted by the sixth noun definition cited by the Examining

Attorney)." (Brief, pp. 2-3). Applicant asserts that any doubt about descriptiveness must be resolved in its favor.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use or intended use. That a term may have other meanings in

different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that:

....the question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one can guess, from the mark itself, considered in a vacuum, what the goods or services are, but rather in relation to the goods or services for which registration is sought, that is, by asking whether, when the mark is seen on the goods or services, it immediately conveys information about their nature.

In re Patent & Trademark Services Inc., 49 USPQ2d 1537, 1539 (TTAB 1998).

When two or more descriptive terms are combined, the determination of whether the composite mark also has a descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive. See, e.g., *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002) [SMARTTOWER merely descriptive of commercial and industrial cooling towers]; *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) [AGENTBEANS merely descriptive of computer programs for use in development and deployment of application programs]; *In re Putnam Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) [FOOD &

BEVERAGE ONLINE merely descriptive of news information services for the food processing industry]; and *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) [SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays].

Applicant describes its product as follows: "a protective blanket or throw which is intended to be used by pets. Such goods can be used to protect articles of furniture or generally placed on the floor providing a comfortable resting place for a domestic pet." (Brief, pp. 1-2). Applicant, on its web site, describes the product as "the ultimate 'security blanket' for both you and your dog or cat." Applicant goes on to further describe its product: "It offers a double-snuggly layer of protection between your precious pet and anything you'd like to keep clean, dry and hair-free. Spread it out over the sofa you share with your pooch. Drape it across your bed before your kitty curls up on it. Throw it over car seats for a trip to the dog park."

The term "spread" is defined, in relevant part, as "a cloth covering for a bed, table, or other piece of furniture." *The American Heritage Dictionary of the English Language* (3d ed. 1992). We recognize that the dictionary lists other meanings for the term, but "spread"

must be analyzed in relation to the goods for which registration is sought, namely "protective blanket throw for pets." That the term "spread" may have other meanings in different contexts is of no avail. The alleged connotations pointed to by applicant simply are too oblique and strained, and, therefore, are highly unlikely to be reached by purchasers, especially given the obvious "pet spread" connotation.

In that connection, we fully recognize that applicant's mark must be considered as a whole in determining whether the mark is merely descriptive because, even if the individual terms are descriptive, the mark as a whole may not be. However, in the present case, we cannot agree with applicant that the combined term is suggestive. Rather, we agree with the examining attorney's assessment that the mark PETSPREAD would be readily perceived as describing the nature of applicant's goods, that is, a spread (throw or covering) for pets.

Also of record is an excerpt from a competitor's web site (www.team-national.com) offering for sale a product called "Pet Spread For Dogs and Cats" and described as "soft, water-proof fleece spread designed to protect your comforter, bedspread or furniture from animal accidents, hair, etc." This descriptive use in the trade buttresses

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our determination that PETSPREAD is merely descriptive when used in connection with a protective blanket throw for pets.

Lastly, while applicant is correct in stating that doubts about descriptiveness are resolved in an applicant's favor, we have no doubts in the present case. See *In re Tekdyne Inc.*, 33 USPQ2d 1949 (TTAB 1994).

Decision: The refusal to register is affirmed.